

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

GRIFFIN PRODUCING COMPANY, and
MAGNUM OIL CORPORATION,

Plaintiffs,

vs.

CASE NO. 14-C-38 and 39

U.S. EXPLORATION, LLC, a
West Virginia Limited Liability Company,
and, HARRY SLACK, individually,

Defendants.

ORDER GRANTING GRIFFIN PRODUCING COMPANY'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

On the 17th day of May, 2017, came Plaintiff, GRIFFIN PRODUCING COMPANY, by and through its counsel, SCOTT A. WINDOM; Plaintiff MAGNUM OIL CORPORATION, by and through its counsel, M. PAUL MARTENEY; and the Defendants U.S. EXPLORATION, LLC, and HARRY SLACK, by and through their counsel, EDMUND WAGONER, for a hearing on Plaintiff Griffin Producing Company's Motion for Partial Summary Judgment. Having read the submissions and heard the arguments and representations of counsel, the Court does hereby find as follows:

I. FINDINGS OF FACT

1. The Plaintiff, Griffin Producing Company, owns the oil, gas and minerals within and underlying four thousand (4000) acres, more or less, situate in Grant District of Ritchie County, West Virginia.

2. By **Modification and Partial Surrender of Overriding Royalty** dated July 12, 2013, Magnum Oil Corporation modified its interest in the subject leasehold estates by surrendering its overriding royalty interest in all formations from the top of the Rhinestreet to the base of the Marcellus Shale.
3. That document was recorded in the office of the Clerk of the County Commission of Ritchie County on August 20, 2013, in Lease Book No. 266 at page 582.
4. By **Surrender of Oil and Gas Lease** dated July 12, 2013, Magnum Oil Corporation surrendered its right to produce and market oil and gas from the subject leasehold estates.
5. That document was recorded in the office of the Clerk of the County Commission of Ritchie County on August 20, 2013, in Lease Book No. 266 at page 584.
6. The aforesaid modification and surrenders are not "conveyances" or "sales of interest in real estate" as contemplated by West Virginia Code §40-1-8&9 and related authority. Rather, they are the proper exercise of unilateral rights based on the undisputed ownership interests of plaintiff, Griffin Production Company.
7. Kathleen Fitzpatrick had the actual and apparent authority to sign the aforementioned documents to Griffin Producing Company.

8. The oil and gas lease terms, which governed the subject leasehold estate, contained a term which required the Lessee to surrender the leasehold estates which were not producing.
9. By **Assignment** dated December 28, 2012, Magnum Oil Company (Not Magnum Oil Corporation) purportedly assigned all of its right title and interest in the subject overriding royalties and leasehold estates to U.S. Exploration, LLC.
10. That document was not recorded until July 15, 2014, and is of record in Lease Book No. 274 at page 571. This earlier dated but later recorded assignment was signed by Harry Slack as "Vic (sic.) President of Magnum Oil Company".
11. It is undisputed that defendant Slack did not provide the assignment to either of the Plaintiffs until after it was lodged of record in the Office of the Clerk of County Commission of Ritchie County, West Virginia.

II. CONCLUSIONS OF LAW

1. "The Circuit Court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." Syl. Pt. 3, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994).

2. "Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syl. Pt. 2, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995).

3. "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).

4. "A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." Rule 56 of the West Virginia Rules of Civil Procedure.

5. Any contract in writing made in respect to real estate or goods and chattels in consideration of marriage; or any contract in writing made for the conveyance or sale of real estate, or an interest or term therein of more than five years, or any other interest or term therein, of any duration, under which the whole or any part of the corpus of the estate may be taken, destroyed, or

consumed, except for domestic use, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract were a deed conveying the estate or interest embraced in the contract.... W.Va. Code § 40-1-8.

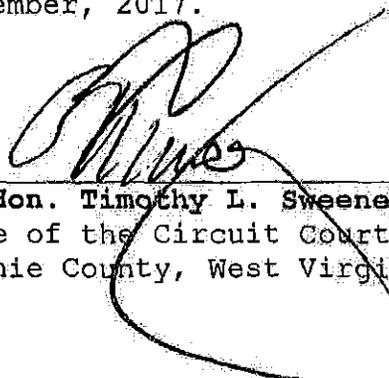
6. Every such contract, every deed conveying any such estate or term, and every deed of gift, or deed of trust or memorandum of deed of trust pursuant to section two, article one, chapter thirty-eight of this code, or mortgage, conveying real estate shall be void, as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, deed of trust or memorandum of deed of trust or mortgage may be. W. Va. Code § 40-1-9.
7. There is no factual dispute that the subject assignments and surrenders to the Plaintiff, Griffin Producing Company, were recorded nearly eleven (11) months before the subject assignment to U.S. Exploration, LLC.
8. Based upon applicable West Virginia law, even if the assignment to U.S. Exploration, LLC, was made on December 28, 2012, it was void, without notice, to subsequent creditors or purchasers until such time as it was duly admitted to record on July 15, 2014, at which time it provided constructive notice to all other persons or entities.

9. The modification and surrender of the subject oil and gas leases were not "conveyances" or "sales of interests in real estate" and therefore are not subject to the requirements of the recording statutes, West Virginia Code §40-1-8 and 40-1-9. See *Shearer v. United Carbon Co.*, 143 W.Va. 482, 488, 103 S.E. 2d 883, 887 (1958).
10. Therefore, the prior assignments and surrenders from Magnum Oil Corporation to Griffin Producing Company were valid documents that transferred title in the subject overriding royalty interests and surrendered the subject leasehold estates as of the time of their recording on August 20, 2013.
11. There was no constructive notice of U.S. Exploration's assignment when Griffin Producing Company acquired its rights in the subject leasehold and overriding royalties insofar as the U.S. Exploration assignment was not of record.
12. Therefore, summary judgment in this matter is appropriate insofar as there are no issues of material fact for trial and the totality of this evidence could not lead a rational trier of fact to find for the Defendant.
13. Moreover, there is no issue that would need to be developed to clarify the application of the well-settled law regarding the effect of the recording to provide notice to subsequent purchasers or creditors.

ACCORDINGLY, it is hereby **ORDERED** that the *Plaintiff's Motion for Partial Summary Judgment* shall be, and it is hereby, **GRANTED**.

The Clerk of this Court is hereby **ORDERED** to provide a certified copy of this order to all counsel of record.

ENTERED this 22nd day of September, 2017.



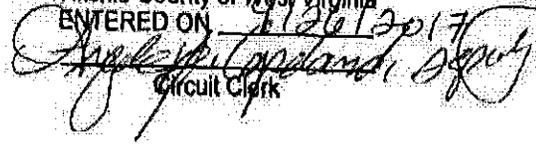
The Hon. Timothy L. Sweeney,
Judge of the Circuit Court of
Ritchie County, West Virginia

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office.

Attest: Rose Ellen Cox
Ritchie County of West Virginia

ENTERED ON

9/26/2017



Circuit Clerk